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10/529,198

12/15/2005

David Murray Melrose

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HENRICKS SLAVIN AND HOLMES LLP
SUITE 200
840 APOLLO STREET
EL SEGUNDO, CA 90245

EXAMINER

WEAVER, SUE A

ART UNIT

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DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/529,198 | Applicant(s) MELROSE, DAVID MURRAY | |
| | Examiner Sue A. Weaver | Art Unit 3781 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 36-58,60-73 and 81-84 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 36-58,60-73 and 81-84 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 December 2010 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/17/10 has been entered.

2. The drawings were received on 12/17/10. These drawings are accepted.

3. The indicated allowability of claims 45, 46 and 59 is withdrawn in view of the newly discovered reference(s) to Lisch et al 6,942,116, Cerny et al 4,381,061, Silvers 2002/00743336, SN11/704,338, 11/704,368. Rejections based on the newly cited reference(s) follow.

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claim 58 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There doesn't appear to be any support for a standing support providing a "substantially flat rigid surface" as now claimed in claim 58.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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7. Claim 36 and thus 37-58 and 60-71 rejected are under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant has failed to establish a clear relationship between a sidewall and the body portion and a neck and the upper portion in claim 36 as it has been amended. These appear to be double inclusions.

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 36,38,39,47-52,56,58,62-73,81 and 82 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lisch et al '116 in view of Cerny et al '061.

10. Lisch teaches a container with a transversely oriented pressure or vacuum panel in the base connected to the lower portion of the sidewall and having an instep at 44. To have also provided a hinge between the instep and pressure pane in the manner of Cerny et al at 23 for ease of folding would have been obvious.

11. Claims 40-43 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 36 above, and further in view of Melrose '826, of record

12. To have formed the panel with an initiator and control portion to provide controlled folding would have been obvious in view of such teaching by Melrose.

13. Claims 55 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 36 and 56 above, and further in view of Dulmaine et al '752, of record.

14. To have formed the container with a pressure panel of varied width and with a configuration to cause a lowest portion of the base to be replaced by as the structure providing a standing support for the container would have been obvious in view of the base configuration taught by Dulmaine et al which may be sued for either metal or plastic constructions.

15. Claim 60 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 36 above, and further in view of Silvers '336.

16. To have optionally provided outwardly projecting portions to reinforce the panel would have been obvious in view of such teaching by Silvers.

17. Claim 61 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 36 above, and further in view of Chang '510, of record.

18. To have optionally provided the panel with inwardly projecting portions would have been obvious in view of Chang. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim

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is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

19. Claims 36, 42, 54, 73, 81 and 82 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1,2,4,9 and 16 of copending Application No. 11/704,338 in view of Lisch et al '116. To have formed the pressure panel with an inclined portion at an angle of more than 20 degrees in the manner of Lisch et al would have been obvious.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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20. Claims 36, 37, 40, 44-47, 65, 73, 83 and 84 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1,3 and 5-8 of copending Application No. 11/704,368 in view of Lisch et al '116 and Cerny et al '061. To have provided the pressure panel in the lower portion of the sidewall in the manner of Lisch et al would have been obvious. To have provided a hinge connecting the panel to the sidewall in the manner of Cerny et al for ease of folding would have been obvious.

This is a provisional obviousness-type double patenting rejection.

21. Claims 36,38,40,41,42,47,48,49,51,52,54 and 83 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1,2,,11,13 and 16 of U.S. Patent No. 7,717,282 in view of Lisch et al' 116 and Cerny et al '061. To have formed the pressure or vacuum panel in the lower portion at an inclined angle of more than 10 degrees in the manner of Lisch et al would have been obvious. Where claimed to have also provided a hinge coupling the panel would have been obvious in view of Cerny et al..

22. Applicant's arguments with respect to claims 36-58 and 60-73 have been considered but are moot in view of the new ground(s) of rejection. Claims 1-35,59 and 74-80 have been canceled

23. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in

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such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

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Please refer to 37 CFR 1.6(a) (4), 1.6(d) and 1.8(a) (2) for filing limitations concerning transmissions via EFS-Web, facsimile transmissions and mailing, respectively.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sue A. Weaver whose telephone number is (571) 272-4548. The examiner can normally be reached on Tuesday-Friday (5-3:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor is Anthony Stashick_. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sue A. Weaver/
Primary Examiner, Art Unit 3781